

Youth Justice. Restorative Justice. Social Justice.

A Scoping Review of Sexualized Violence Among Youth in the Criminal Justice System and the Toronto District School Board

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Land Acknowledgement

Peacebuilders acknowledges that the land in which we live, and work has been the site of human activity since time immemorial. The land in which Peacebuilders organization is located and operates, is the traditional and ancestral territory of the Huron-Wendat, the Seneca and most recently the Mississauga's of the Credit River. The territory was the subject of the Dish With One Spoon Wampum Belt Covenant and agreement between the Iroquois Confederacy and the Confederacy of the Ojibway and allied nations to peacefully share and care for the resources around the Great Lakes.

We are all treaty people. Many of us, have come here as settlers, immigrants, newcomers in this generation or generations past. We are mindful of broken covenants and we strive to make this right, with the land and with each other, and honour the rights of Indigenous people. As settlers, this recognition must be connected to our collective commitment; to not only acknowledge historical implications of violence and intergenerational trauma that residential schools, broken treaties and practices of colonization has had on the cultural traditions, identities and the lives of Indigenous peoples.

We also acknowledge those of us who came here involuntarily, particularly as a result of the Trans-Atlantic Slave trade. And so, we honour and pay tribute to the ancestors of African Origin and descent whom also continue to live the impacts of colonization in solidarity with Indigenous peoples.



Peacebuilders is a non-profit organization based in Toronto that seeks to improve access to justice for young people in conflict with the law and advocate for change in our justice, child welfare and education systems.

Through our supportive programming, training and advocacy, Peacebuilders promotes restorative approaches to justice as more developmentally appropriate ways to work with youth and adolescents in conflict and support their emotional growth, critical reflection and positive decision-making skills. Peacebuilders uses restorative programs in the youth court to offer meaningful alternatives for youth and in the education system help students and teachers manage conflict, activate safer school environments for learning and support youth, adolescents and families as they navigate the child welfare system.





Purpose

The purpose of the following report was to gather information on the prevalence of sexualized violence in both the Toronto District School Board and the Youth Criminal Justice System. Utilizing this information, we assessed whether restorative justice practices had been used and whether there is reason to believe these practices could be useful moving forward.

The results of our research found that in the Toronto District School Board, the frequency of use of restorative justice practices continues to increase as a way of reconciling sexualized violence cases. Empirical evidence also supports the use of restorative justice practices in cases of sexualized violence. It is important to note that this report focuses specifically on instances of sexual assault and sexual harassment, as these are the most commonly reported instances of sexualized violence in both the Toronto District School Board and the Youth Criminal Justice System.

Consequently, this report is not an exhaustive review of all cases of sexualized violence.

We hope this report provides a scoping review of the issue at hand, while also providing a foundation to create programs rooted in evidence and to educate professionals on an alternative method for managing sexualized violence.

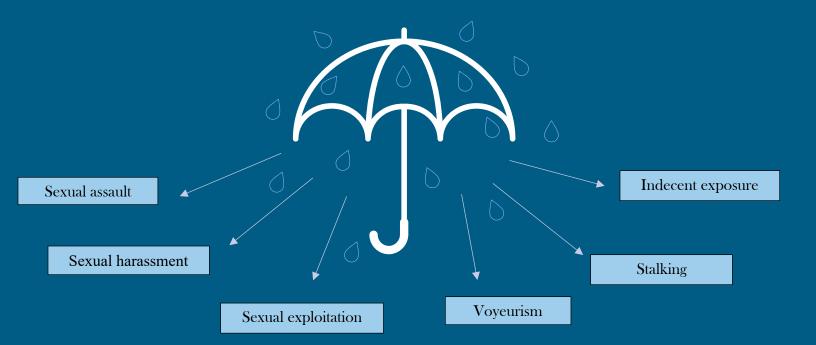


What is Sexualized Violence?

The World Health Organization (WHO) defines sexualized violence as "any sexual act, attempt to obtain a sexual act, or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting." (WHO, 2021).

It can be further explained as: "a broad category of actions in which a person exerts their power and control over another person through unwanted or harmful sexual actions," (Sexual Violence Definitions / Center for Survivors / Michigan State University, n.d.).

Sexualized violence can be understood as an umbrella term which encompasses several different acts of violence including, but not limited to (Sexual Violence Definitions | Center for Survivors | Michigan State University, n.d.):



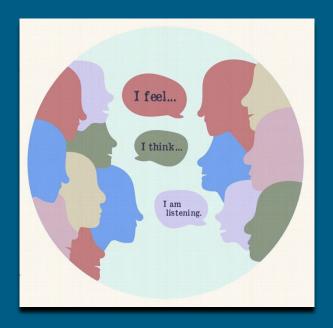


Terminology

Toronto District School Board Definition	Criminal Code Definition
Sexual assault: Any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim. The term refers to a range of behaviours that involve the use of force or control over the victim. In some cases, no overt physical force is used – instead, the victim may be threatened with words or pressured into doing something he or she doesn't want to do (Toronto District School Board, 2020).	Sexual assault: Divided into three different levels in Canada: Section 271 (Level 1): Sexual assault occurs if a person is touched in any way that interferes with their sexual integrity: this includes kissing, touching, intercourse and any other sexual activity without his/her consent.
Note: the TDSB also uses the Criminal Code's definitions of sexual assault, in conjunction with the definition above.	Section 272 (Level 2): Sexual assault with a weapon, threats to a third party or causing bodily harm occurs if a person is sexually assaulted by someone who has a weapon or imitation weapon and threatens to use it; the offender threatens to harm a third person, a child or a friend if the person does not consent to a sexual act; the offender causes harm to the person; or more than one offender assaults the person in the same incident.
	Section 273 (Level 3): Aggravated sexual assault occurs if the person assaulted is wounded, maimed, disfigured, beaten or in danger of losing her/his life while being sexually assaulted.
Sexual harassment: Sexual harassment occurs when a person receives unwelcome sexual attention from another person, whose comments or conduct is known or should reasonably be known to be offensive, inappropriate, intimidating, hostile, and unwelcome. It also includes an environment in which sexist or homophobic jokes and materials have been allowed (Toronto District School Board, 2020).	Sexual harassment: Sexual harassment is not defined in the Criminal Code. However, it is defined in the Ontario Human Rights Code as: " unwelcome sexual contact and remarks, leering, inappropriate staring, unwelcome demands for dates, requests for sexual favours, spreading sexual rumours (including on-line) and displays of sexually offensive pictures or graffiti," (Ontario Human Rights Commission, n.d.).
Youth: The TDSB defines includes anyone between Junior Kindergarten (approximately 4 years of age) and Grade 12 (approximately 18 years of age).	Youth: According to the Youth Criminal Justice Act, a youth is anyone between the ages of 12 and under the age of 18.



What is Restorative Justice?



"Restorative justice is a way of addressing conflict that enables the individual who caused harm, the people who were affected by it, and the larger community to work together to create a meaningful resolution. In contrast to criminal justice responses, which seek to punish each act of wrongdoing, restorative justice focuses on repairing harm and restoring relationships," – Peacebuilders Canada

Resolution: Finds a solution that works for everyone involved (victim, offender, and community)



Key Elements:

<u>Healing</u>: The goal is to heal the harm caused, not punish the offender



<u>Rehabilitation</u>: Repair the relationship that was harmed and create a plan moving forward that works for all involved





Prevalence of Youth Sexualized Violence in the Toronto District School Board

Every year, the Toronto District School Board compiles a report of all the suspensions and expulsions from that academic year (September – June). The report contains information on the type of event that resulted in the suspension or expulsion, where the event took place, whether the police were involved, and the type of intervention used in response. The following statistics are taken from these annual TDSB reports.

Importantly, the number of suspensions and expulsions has generally been decreasing since 2014. However, sexual harassment and sexual assault suspensions have been increasing over the past several years. Evidently, there is a need for interventions to deal with the increasing cases of sexualized violence within the Toronto District School Board.

2014-2015 Report

- 32 (0.5%) of all suspensions were for sexual assault
- 18 (0.3%) of all suspensions were for sexual harassment
- 2 (3.2%) of all expulsions were for sexual assault
- 1 (1.6%) of all expulsions were for sexual harassment
- Restorative practices were used for **6.8%** of all interactions (does not specify which ones)
- The majority (79.2%) of all incidents (not just sexualized violence) occurred on school property (most common locations: classroom, hallways, school yard)
- Police were involved in 20.1% of all suspensions and/or expulsions (not just sexualized violence cases)



2016-2017 Report

- 31 (0.4%) of suspensions were for sexual assault
- 30 (0.4%) of suspensions for sexual harassment
- 2 (3.1%) of expulsions for sexual assault
- No reported expulsions for sexual harassment
- Restorative practices were used for **7.7%** of all interactions (does not specify which ones)
- The majority (**79.1%**) of incidents occurred on school property (most common locations: classroom, hallways, school yard)
- Police were involved in 20.7% of all suspensions and/or expulsions (not just sexualized violence cases)



2015-2016 Report

- 17 (0.2%) of suspensions were for sexual assault
- 28 (0.4%) of suspensions were for sexual harassment
- 7 (8.9%) of expulsions were for sexual assault
- 1 (1.3%) of expulsions were for sexual harassment
- Restorative practices were used for **7.0%** of all interactions (does not specify which ones)
- The majority (80.1%) of incidents occurred on school property (most common locations: classrooms, hallways, school yard)
- Police were involved in 20.4% of all suspensions and/or expulsion (not just sexualized violence cases)







2017-18 Report

- 24 (0.4%) of suspensions were for sexual assault
- **27 (0.4%)** of suspensions were for sexual harassment
- 4 (7.8%) of expulsions were for sexual assault
- 1 (2.0%) of expulsions for sexual harassment
- Restorative practices were used for **9.1%** of all interactions (does not specify which ones)
- The majority (78.7%) of incidents occurred on school property (most common locations: hallways, classroom, school yard)
- Police were involved in **18.4%** of all suspensions and/or expulsions (not just sexualized violence)

2018-19 Report

- 49 (0.9%) of suspensions for sexual assault
- 40 (0.7%) of suspensions for sexual harassment
- 2 (6.7%) expulsions for sexual assault decrease from the year before
- No reported expulsions for sexual harassment
- Restorative practices were used for **10.4%** of all interactions (does not specify which ones)
- The majority (76.6%) of incidents occurred on school property (most common locations: hallways, classroom, school yard)
- Police were involved in 22.3% of all suspensions and/or expulsions (not just sexualized violence)





2019-20 Report

- 42 (1.2%) of suspensions for sexual assault
 - Note: numbers may have artificially decreased since 3-4 months of school were missed due to the COVID-19 pandemic.
- **30 (0.8%)** of suspensions for sexual harassment (down slightly from year before but higher percentage of suspensions & relatively stable)
- No reported expulsions for sexual harassment
- No reported expulsions for sexual assault
- The majority (76.3%) of incidents occurred on school property (most common locations: hallways, classroom, school yard)
- Police were involved in **22.8%** of all suspensions and/or expulsions



Prevalence of Youth Sexualized Violence in the Youth Criminal Justice System

Each year, the Ontario Criminal Court Database releases a report outlining the crime statistics for both adults and youth. This report is broken down into regions across the province of Ontario. The following information is taken from the reports on youth crime in the Toronto region.

Within these reports, there are two types of sexual crimes listed: sexual assault and other sexual offences. Since 2015, sexual assault cases have continued to represent an increasing amount of the total crime in the Toronto region. Furthermore, according to these reports, the majority of sexualized violence cases are disposed of, many before trial. Since a majority of these cases are not being dealt with by the Courts, there is evidence that an alternative method is needed to address these acts of violence. Restorative Justice is one such intervention that could rehabilitate the person responsible and provide an opportunity for healing and reconciliation for all involved.



January - December 2016

- Sexual assault
 - o 69 cases received (2.1% of *all* cases received)
 - o 29 cases disposed
 - o 65 cases pending
 - Trial rate = 27.6%
- Other sexual offences
 - o 17 cases received (0.5% of all cases received)
 - o 8 cases disposed
 - o 21 cases pending
 - Trial rate = **25.0%**

Legend

<u>Cases Received</u>: all cases received by court location, adjusted for transfers to or from another court location (Ontario Courts, n.d.).

<u>Cases Disposed</u>: Refers to cases completed in the Ontario Court of Justice including those committed for trial in the Superior Court of Justice (Ontario Courts, n.d.).

<u>Cases Pending</u>: Cases that have a future court date (Ontario Courts, n.d.)

January - December 2015

Sexual assault

- o **39** cases received (**1.3%** of *all* cases received)
- o 75 cases disposed
- o 33 cases pending
- Trial rate = **13.3%**

• Other sexual offences

- 20 cases received (0.6% of all cases received)
- o 24 cases disposed
- o 17 cases pending
- o Trial rate = 12.5%



January - December 2017

Sexual assault

- 57 cases received (1.8% of all cases received)
- 52 cases disposed
- o 61 cases pending
- o Trial rate = 11.5%

• Other sexual offences

- o **21** cases received (**0.7%** of *all* cases received)
- o 10 cases disposed
- o 28 cases pending
- Trial rate = 30.0%



January - December 2018

- Sexual assault
 - o 57 cases received (2.2% of all cases received)
 - o 69 cases disposed
 - o 47 cases pending
 - o Trial rate = **7.2%**
- Other sexual offences
 - o 16 cases received (0.6% of all cases received)
 - o 21 cases disposed
 - o 19 cases pending
 - o Trial rate = **57.1%**





January - December 2019

- <u>Sexual assault</u>
 - o 67 cases received (2.8% of all cases received)
 - o 49 cases disposed
 - o 49 cases pending
 - o Trial rate = **8.2%**
- Other sexual offences
 - o 15 cases received (0.6% of all cases received)
 - o 14 cases disposed
 - o 17 cases pending
 - o Trial rate = **21.4%**

January - December 2020

- Sexual assault
 - o 46 cases received (3.6% of *all* cases received)
 - o 26 cases disposed
 - o 66 cases pending
 - \circ Trial rate = **0.0%**
- Other sexual offences
 - o 32 cases received (2.5% of all cases received)
 - o 8 cases disposed
 - o 38 cases pending
 - o Trial rate = **37.5%**

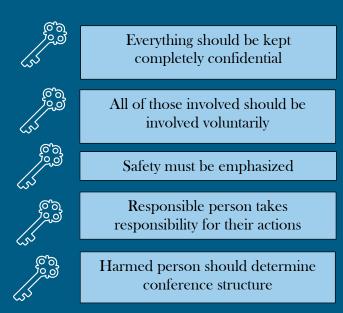


Best Practices for Implementing Restorative Justice in Sexualized Violence Cases¹

Benefits of Using
Restorative Justice in
Cases of Sexualized
Violence:

Encourages accountability, remorse and transformation from the offender

Key Elements²





Psychological support services should be made available to all of those involved



Responsible person is offered rehabilitative services



Facilitators should have specialized training for cases involving sexualized violence



Terms of redress should be available in a written document



Restorative practices for sexualized violence should be evaluated routinely to ensure effectiveness

¹ Mercer, Sten Madesen, Keenan, & Zinsstag, 2015.

² Burns, & Sinko, 2021.



Restorative Justice & Sexualized Violence: The Victims' Perspective

The use of restorative justice in cases involving sexualized violence remains contentious despite there being several benefits to the practice. A study by Marsh & Wager (2015) sought to compare how survivors and non-survivors of sexualized violence view the use of restorative justice in cases of sexualized violence. The authors concluded that both survivors and non-survivors expressed positive views toward the use of restorative justice in cases of sexualized violence (Marsh & Wager, 2015). The information presented below highlights the survivors' perspectives of the use of restorative justice in these instances:

Sample

- 131 participants took part in the study
- 27 (20.6%) males, 93 (71%) females, 11 (8.4%) who did not specify their gender
- Age range: 18-57 years (M = 31)
- 34% of the sample disclosed they had been the victim of at least one case of sexualized violence

Survivors' Voices

"I didn't know what it [restorative justice] was or that it would be available. I would definitely [consider taking the option of restorative justice] if I had the chance."

"Counselling/psychotherapy with a therapist who specialise in treating victims of sexual violence should be offered both before and after the conference to allow them to prepare for it and process it safely."

"Sometimes I still want answers to my questions, but I know I will never get them. Something indirect might help, maybe letters."

Key Survey Responses

- **70.6%** of survivors welcomed the opportunity for a victim and harm-doer to meet in a restorative justice meeting
- **35.3%** of survivors thought it would be beneficial for a victim and harm-doer to meet in a restorative justice meeting
- 30.3% of survivors preferred the idea of having a restorative justice meeting instead of going to court; while 55.9% were interested in a restorative justice meeting in conjunction with a court date
- 41.2% of survivors thought it was unwise for victims to meet the harm-doer in a restorative justice meeting; while 26.4% thought it would be dangerous
- **29.4%** of survivors thought it would do the victim more harm to meet their harm-doer in a restorative justice meeting
- **73.5%** of survivors thought it was a good idea to allow victims the chance to ask their harm-doer questions indirectly (i.e. through letters)
- 41.2% of survivors thought it would be beneficial for the harm-doer to meet their victim in a restorative justice meeting
- 50% of survivors thought it was a good idea for victims to meet with people responsible for committing similar crimes to tell them about their experiences
- 51.5% of survivors thought the people responsible for harm would better understand the implications of their actions through restorative justice meetings
- **41.4%** of survivors thought the person responsible would be less likely to reoffend if they met their victim in a restorative justice meeting
- If they could not hear from the person they harmed, **58.9%** of survivors thought it was a good idea for harm-doers to meet with victims of similar crimes to hear about their experiences

"Vetting the responsible person to try and ensure that they will not become a danger to the victim after meeting and that they will properly engage with the conference process."



Critical Questions

1. Why isn't the data about sexualized violence suspensions and expulsions broken down by age group within the annual TDSB report?

Each year, the TDSB releases a report outlining the suspensions and expulsions which occurred that academic year. Within the report, details are provided about which age group (e.g., elementary, secondary) is responsible for the most and the least number of suspensions and expulsions. However, the report does not provide age-related information for each behaviour that resulted in a suspension and/or expulsion (e.g., listing the age group being suspended most frequently for sexual assault). The report also does not address the age of the individual affected in these acts. Since the TDSB already collects age-related data in incidents of suspensions and expulsions, they should be able to report on the ages of those students who are responsible for and harmed by sexualized violence.

There are evident benefits to breaking down the sexualized violence data by age groups, namely that some age groups more frequently engage in, and are affected by, sexual harassment and sexual assault. For example, Canadians between the ages of 15-24 have the highest rates of sexual assault in the country (71 incidents per 1,000 people; D. of J. C. Government of Canada, 2017). In other words, students who are in secondary school, are more likely to be affected by sexual assault. By knowing what age groups are engaging in and/or being affected by sexualized violence, the school board will be able to target the correct demographic in implementing preventive and restorative programs to address the issue.



2. Why isn't the sexualized violence data from the TDSB broken down by gender, sexual orientation, and race?

The TDSB also provides information about the gender, sexual orientation, and ethno/racial background of individuals most likely to be suspended and expelled. However, just as with the age-based data, the information is provided for all infractions, as opposed for each behaviour separately. There are benefits in gathering, and reporting, demographical information (e.g., gender, sexual orientation, and race) about instances of sexualized violence, given that both police-reported and self-reported data, indicate that certain demographics are more likely to be affected by sexualized violence.³

Police-reported data has also been able to identify a common profile of someone who is more likely to be responsible for sexualized violence. According to the 2007 Canadian data, 97% of people who are responsible for sexualized violence are men. Rates are also highest among younger people, ages 12-16 (90 per 100,000 population), followed by young adults, ages 18-34 (55 per 100,000) and middle-age adults (42 per 100,000; (*The Nature of Sexual Offences*, n.d.).

In gathering and reporting information about the demographic most likely to experience this form of violence, and those responsible for it, the school board can implement the appropriate equitable, proactive, and responsive programming to properly address the issue.

³ For example, women experience higher rates of sexualized violence compared to men: 37 incidents per 1,000 women vs. 5 incidents per 1,000 men (D. of J. C. Government of Canada, 2017). Sexual minority Canadians (i.e., gay, lesbian, pansexual, asexual, or otherwise not heterosexual) are three times more likely to experience sexual assault compared to heterosexual Canadians, and over a third (36%) report experiencing unwanted sexual attention, including comments, gestures, body language, whistles, or calls (Government of Canada, 2020). Lastly, in a study by Langenderfer-Magruder et al. (2016), which sought to assess the lifetime prevalence of police-reported sexual assault/rape in a sample of LGBTQ adults, researchers found that transgender participants experienced sexual assault/rape twice as frequently as cisgendered participants.



3. Why aren't the intervention methods used in each suspension and expulsion broken down for instances of sexualized violence in the TDSB?

The TDSB reports on the most common interventions used in all suspensions and expulsions from the preceding academic year. By publishing the breakdown of interventions used in each instance (i.e., in cases of sexualized violence), it would allow for the assessment of how restorative practices are being used to respond to sexualized violence. Consequently, if the use of restorative justice in cases of sexualized violence is notably low, there would be an opportunity for a restorative intervention to be piloted in these instances. And, if the practices are already common, it would allow for them to be evaluated to ensure they are providing the most safe, efficient, and rehabilitative care to both the person affected by the violence and the individual responsible.



References

- Burns, C. J., & Sinko, L. (2021). Restorative justice for survivors of sexual violence experienced in adulthood: a scoping review. *Trauma, Violence, & Abuse*. https://journals.sagepub.com/doi/10.1177/15248380211029408
- Government of Canada, D. of J. C. (2017, January 31). *Intimate Partner Violence—JustFacts*. https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/apr01.html
- Government of Canada, S. C. (2020, September 9). *Experiences of violent victimization and unwanted sexual behaviours among gay, lesbian, bisexual and other sexual minority people, and the transgender population, in Canada, 2018.* https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00009-eng.htm
- Marsh, F., & Wager, N. M. (2015). Restorative justice in cases of sexual violence: Exploring the views of the public and survivors. *Probation Journal*, 62(4), 336–356. https://doi.org/10.1177/0264550515619571
- Mercer, V., Sten Madesen, K., Keenan, M., & Zinsstag, E. (2015). Doing restorative justice in cases of sexual violence: A practice guide.
- Ontario Courts, maintained by the J. L. (n.d.). *Criminal Court Statistics* | *Ontario Court of Justice*. Retrieved May 31, 2022, from https://www.ontariocourts.ca/ocj/stats-crim/
- Sexual harassment [16] | Ontario Human Rights Commission. (n.d.). Retrieved May 19, 2022, from https://www.ohrc.on.ca/en/part-i-%E2%80%93-freedom-discrimination/sexual-harassment-16
- Sexual Violence Definitions | Center for Survivors | Michigan State University. (n.d.). Retrieved May 16, 2022, from https://centerforsurvivors.msu.edu/education-resources/sexual-violence-educational-information/sexual-violence-definitions.html
- The nature of sexual offences. (n.d.). Retrieved May 19, 2022, from https://www150.statcan.gc.ca/n1/pub/85f0033m/2008019/findings-resultats/nature-eng.htm
- Toronto District School Board. (2020, September 22). *Promoting a positive school climate*. https://www.tdsb.on.ca/About-Us/Detail/docId/1195
- Toronto District School Board. (2015). Caring and Safe Schools Report 2014-2015. https://www.tdsb.on.ca/High-School/Caring-Safe-Schools/Annual-Report
- Toronto District School Board. (2016). Caring and Safe Schools Report 2015-2016. https://www.tdsb.on.ca/High-School/Caring-Safe-Schools/Annual-Report



- Toronto District School Board. (2017). Caring and Safe Schools Report 2016-2017. https://www.tdsb.on.ca/High-School/Caring-Safe-Schools/Annual-Report
- Zheng, S. (2019). Caring and safe schools report 2017-18. Toronto, Ontario, Canada: Toronto District School Board.
- Zheng, S. (2020). *Caring and safe schools report 2018-19*. Toronto, Ontario, Canada: Toronto District School Board.
- Zheng, S. (2021). *Caring and safe schools report 2019-20*. Toronto, Ontario, Canada: Toronto District School Board.